

REMARKS

1. The Amendments, the Support Therefor, and Basis for Entry

No claims have been canceled, six new claims (69-74) have been added, and claims 49, 58, and 65 have been amended to leave claims 49-74 in the application. No new matter has been added by the amendments or new claims, which all find support in the specification at the locations noted in Section 4 of this Response (below). Payment for the newly-submitted claims in excess of the amount previously paid for should accompany this Response, as per 37 CFR §1.16(b)-(d), with the fee due being calculated as follows:

FEE CALCULATION

For	Already Paid	No. Extra	Rate (SMALL ENTITY)	Fee (SMALL ENTITY)
Total Claims	26 - 20 =	6	x \$25 =	\$150
Independent Claims	3 - 3 =	0	x \$105 =	\$0
Total:				\$150

2. Section 3 of the Office Action: Priority

It is understood that the priority claim is objected to. Kindly reconsider and withdraw this objection, as the cited documents are in fact drawn to the same invention. Looking to, for example, GB 0326859.6 filed on 18 November 2003, page 14 lines 5-8 note that:

The transistor switch circuit could be located in the internal or the external surface of the container. It could be located within a moulded indentation of the container, or embedded into the material of the container. *It could be hidden under, or attached to the back of a label, or other material that is subsequently attached to the container.*

(Emphasis added.) FIG. 8 then shows the circuit situated within an indentation in the bottom of the container (see page 15 lines 23-25). The application notes that these features may be used together (e.g., page 21 at lines 11-12, “[t]he features of the various embodiments may be interchanged and/or combined as appropriate”). Thus, the priority claim is valid at least to the date of 18 November 2003.

3. Section 4 of the Office Action: Abstract

Kindly reconsider and withdraw the objection to the Abstract, or provide more guidance as to what should be excised (or otherwise amended) in the Abstract. It is stated that “[e]xtensive mechanical or design details of apparatus should not be given”, but the Abstract does not seem to contain “extensive details.” Consider that as the Abstract stands, it provides a concise summary of the presently-claimed invention, and it is unclear how the Abstract can be further redacted and still provide a suitable summary of the presently-claimed invention. If the objection is maintained, kindly indicate specifically what should be deleted. In this instance, a suggested substitute Abstract would be highly useful. Otherwise, if it would suffice if all of the Abstract was deleted save for the first sentence, kindly effect this via an Examiner’s Amendment (or indicate in any subsequent Office Action that this step, if taken by the Applicant, would obviate the objection).

4. Section 5 of the Office Action: Objection to the Drawings

Kindly reconsider and withdraw this objection. FIGS. 5-6 are supported by page 18 lines 23-26, which contains the passage noted in the foregoing Section 2 of this Response (stating that the circuit can be located in an indentation in the container, and “attached to the back of a label, or other material that is subsequently added to the container”); and a circuit situated in the bottom of the container within an indentation is shown in FIGS. 5 and 6a as originally filed (and is noted at page 19 lines 13-15 and page 22 lines 17-19). See also pages 4 lines 8-12 (noting that the battery may be situated on the bottom surface of the container). Page 26 at lines 10-11 further state that “[t]he features of the various embodiments may be interchanged and/or combined as appropriate.” Since the amended drawings are supported by the foregoing passages, kindly withdraw the objections. It is also noted that the amendments to FIGS. 5 and 6a were made to illustrate the matter of current independent claims 49, 58, and 65 to comply with 37 CFR 1.83(a), and the issue of new matter has not been raised with respect to these claims; thus, it should presumably not arise with respect to the drawings either.

5. Sections 6-8 of the Office Action: Rejection of Claims 49, 50, 53, 54, 56, and 57 under 35 USC §103(a) in view of U.S. Patent Pub. 2004/0004829 to *Policapelli*

Kindly reconsider and withdraw the rejection of independent claim 49 (and thus its dependent claims 50, 53, 54, 56, and 57). *Policapelli* is generally directed to a container having phosphorescent material embedded therein (par. [0006]), wherein the container glows when a light source on the container is activated (par. [0007]). Various versions of this arrangement are illustrated in FIGS. 1-6, which are discussed at pars. [0023]-[0029]. Par. [0042] then notes that the phosphorescence may instead be provided in a label which glows under the influence of ambient or other light. Claim 49, as amended, recites that the circuit device is affixed to the back of a label, and the label is affixed to the bottom surface of the bottle. As admitted in Section 8 of the Office Action, *Policapelli* does not disclose the circuit device being affixed to the back surface of a label. The rejections reason that:

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to position the label over the patented circuit device of POLICAPELLI to hide such device from view. In addition, it is noted that it is not only old and well known in the art, but a standard practice, to position labels over the location disclosed by POLICAPELLI for the patented circuit device.

However, we submit that this rationale is inapplicable to the currently-claimed arrangement. Initially, as common experience shows, it is *not* common practice to place labels on the bottom of a bottle. Further, there is no need to use a label to “hide such [circuit] device from view when the device is on the bottom of the bottle: it is already hidden by virtue of being on the bottom. In this respect, the claimed device would never be contemplated in view of *Policapelli* because a phosphorescent label on the bottom of a bottle would be useless: one would not see the label’s glow, nor would they see the information on the label. See MPEP 2143.01 (subsection entitled “The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose”). Also note that one would not truly place an illumination device on the back of a phosphorescent label such as the one discussed by *Policapelli*: since the light emitter would be situated immediately adjacent the label, it would effectively illuminate only a small area of the label, and thus only a small area of the label would glow – which is also

contrary to *Policapelli*'s purposes. Further, this assumes that the light emitter would be directed toward the label. In *Policapelli*, this is not the situation: in all *Policapelli* arrangements, the emitter emits away from the external surface of the circuit device against which a label would rest, such that if the light emitter was situated behind a label, the emitted light would not be directed toward the label.

In summary, an ordinary artisan who had no knowledge of the currently-claimed arrangement would not truly contemplate the claimed arrangement after viewing *Policapelli* and all other references of record in view of common knowledge in the art. Kindly withdraw the rejections.

In addition, regarding claim 53, there is nothing in FIG. 1A of *Policapelli*, or anywhere else in *Policapelli* (or any other reference of record), which suggests magnetic actuation. If this rejection is maintained, please provide a properly detailed *prima facie* basis for the rejection. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (U.S. 2007) (“rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). See also MPEP 2141 (quoting KSR for the foregoing principle).

6. Sections 10-13 of the Office Action: Rejection of Claims 51, 52, and 55 under 35 USC §103(a) in view of U.S. Patent Pub. 2004/0004829 to *Policapelli* and U.S. Patent 6,254,247 to *Carson*

These claims are submitted to be allowable for at least the same reasons as their parent claim 49.

7. Sections 14-17 of the Office Action: Rejection of Claims 58-60, 63, and 64 under 35 USC §103(a) in view of U.S. Patent Pub. 2004/0004829 to Pollicapelli

These rejections are predicated on the same rationale as that applied for the rejection of claim 49, discussed at the foregoing Section 5 of this Response, and claim 58 (and thus its dependent claims 59-60, 63, and 64) are submitted to be allowable for at least the same reasons as those noted in the foregoing Section 5.

8. Sections 18-21 of the Office Action: Rejection of Claims 61 and 62 under 35 USC §103(a) in view of U.S. Patent Pub. 2004/0004829 to Pollicapelli and U.S. Patent 6,254,247 to Carson

These claims are submitted to be allowable for at least the same reasons as their parent claim 58.

9. Sections 22-26 of the Office Action: Rejection of Claims 65-68 under 35 USC §103(a) in view of U.S. Patent Pub. 2004/0004829 to Pollicapelli and U.S. Patent 6,254,247 to Carson

Claim 65, and its dependent claims 66-68, are submitted to be allowable because neither *Pollicapelli* nor *Carson*, nor the remaining references of record (nor the ordinary knowledge in the art), would lead an ordinary artisan to the claimed arrangement, as per the reasoning set forth in the foregoing Section 5 of this Response.

Additionally, regarding claim 66, column 5 lines 8-11 of *Carson* relates to using the bottle cap as part of the switch that activates the light – but there is no apparent reason why an ordinary artisan would contemplate that removal of the cap would also serve to remove an insulating tab (and more specifically, there's no indication of how this might be accomplished).

10. New Claims 69-74

New claims 69-74 are submitted to be independently allowable because (1) the art of record does not suggest that the emitter emit light away from the label, since *Policapelli*'s emitter is intended to illuminate the label so that it may phosphoresce, and (2) there is nothing whatsoever that suggests an arrangement wherein the device is affixed to the bottle/container solely via a label.

11. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



Craig A. Fischko, Reg. No. 39,668
CUSTOMER NO. 25005
DEWITT ROSS & STEVENS S.C.
2 E. Mifflin St., Suite 600
Madison, WI 53703-2865
Telephone: (608) 395-6722
Facsimile: (608) 252-9243
cf@dewittross.com